IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

MACA.No. 490 of 2003()

OPMV.823/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA

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APPELLANT - 2ND RESPONDENT

THE NEW INDIA ASSURANCE COMPANY LIMITED,
KATTAPPANA NOW REPRESENTED BY ITS
ASSISTANT ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, M.G.ROAD, KOCHI - 11

BY ADV. SRI.MATHEWS JACOB (SR.)

RESPONDENTS: 1ST RESPONDENT

JEGGI JOSEPH, PADIKKARA, VETTIMUGAL P.O.
ETTUMANOOR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 490 OF 2003

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Dated this the 29th day of May, 2007

J U D G M E N T

The Insurer in O.P(MV) No.823 of 1998 on the file of the Motor Accidents Claims Tribunal, Thodupuzha is the appellant. Appeal is filed challenging the award passed by the Tribunal by which the appellant was directed to indemnify the insured.

2. Petitioner in the O.P., one Mr. Jayadevan, who is not a party to this appeal, was driving an Autorikshaw bearing Reg. No.KL-7/T-831 through Vallakkadavu-Nariyampara road on 4.7.1998. At about 3.45 p.m. when the vehicle driven by Jayadevan reached Nariyampara, a stage carriage bearing Reg. No.KL-5T/C-5706 came from the rear side and hit against the Autorikshaw. Jayadevan sustained injuries. He filed the O.P. claiming compensation. Driver was not made a party to the proceedings. The owner, though made as a party, did not appear and contest the case. Appellant alone contested the matter. Appellant has disputed the negligence of the driver of the bus and also the quantum of compensation. But the main contention raised by the appellant was that it has no liability

to indemnify the insured in this case. It was contended that the bus was insured with the appellant for the period from 21.6.1998 till 20.6.1999. It was also contended that the policy was taken on 19.6.1998 by issuing a cheque for the premium amount covered by the policy. It was further contended that when the cheque was presented for payment, the same was dishonoured for want of sufficient funds. It was also contended that the appellant received Exhibit B3 dishonour memo along with Exhibit B2 letter dated 13.7.1998. On 22.7.1998 appellant sent a letter to the owner of the bus informing the dishonour of the cheque and demanded payment. The accident occurred on 4.7.1998. The Tribunal took a view that since the policy was not cancelled by the appellant prior to the date of the accident, appellant is liable to pay the compensation awarded as the vehicle was covered by a valid policy of insurance.

3. Shri Mathews Jacob, learned Senior counsel appearing for the appellant, submitted that in such a case though the appellant is liable to indemnify the insured, it has got a right to recover the amount from the insured since there

was no valid policy of insurance.

4. In **Oriental Insurance Co. Ltd. v. Sivankutty** (2005 (4) KLT 108 (F.B.), a Full Bench of this Court considered the same issue and held that even in a case of dishonour of cheque for the premium paid, the liability of the insurance company in the matter of third party risk continues for the entire period covered by the policy in spite of the dishonour of the cheque and subsequent cancellation of the policy. It was further held that the remedy of the insurance company lies against the insured for the amount paid by it for third party risk to be reimbursed.

5. In this case, the Tribunal went wrong in not giving permission to the appellant to recover the amount from the insured. So the appeal is to be allowed to that extent. But I do not find any reason to interfere with the finding that the accident occurred due to the rash or negligent driving of the stage carriage and the petitioner is entitled to get an amount of Rs.58,225/- as compensation.

In the result, the appeal is allowed in part. The finding of the Tribunal that the appellant is liable to pay the amount of

compensation awarded in this case to the claimant, who is a third party, is confirmed. However, the appellant is allowed to recover the amount, if any, paid by it to the third party from the insured.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

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29TH MAY, 2007